

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RUDOLPH W. GRIFFIN,

Plaintiff,

v.

ANTHONY ANNUCCI, *et al.*,

Defendants.

No. 18-CV-10405 (KMK)

ORDER TO AMEND

KENNETH M. KARAS, United States District Judge:

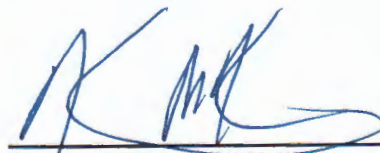
Pro se Plaintiff Rudolph W. Griffin (“Plaintiff”), currently incarcerated at Green Haven Correctional Facility, brings this Action, pursuant to 42 U.S.C. § 1983, against Anthony Annucci, Acting Commissioner of the New York State Department of Corrections and Community Supervision (“DOCCS”); Superintendent Michael Capra; Dr. Felix Ezekwe; Dr. Valerie Monroe; Frank Corso; and Registered Nurse Rowah Rosario (collectively, “Defendants”). (*See* Compl. (Dkt. No. 2).) Plaintiff filed his Complaint on November 8, 2018. (*Id.*) On December 13, 2018, the Court granted Plaintiff’s request to proceed in forma pauperis (“IFP”), (Dkt. No. 6), and on December 19, 2018, the Court directed service on Defendants, (Dkt. No. 8). On April 30, 2019, Defendants requested leave to file a Motion To Dismiss Plaintiff’s Complaint (the “Motion”), (Dkt. No. 16), and the Court set a briefing schedule, (Dkt. No. 17). Defendants filed their Motion on April 30, 2019. (Defs.’ Not. of Mot.; Defs.’ Mem. of Law in Supp. of Mot. (Dkt. Nos. 18–19).) After receiving Defendants’ Motion, Plaintiff filed a letter with the Court “respectfully conced[ing] to . . . [D]efendants[’] [M]otion . . . in its current form” and “request[ing] [that] the [C]ourt . . . dismiss the [C]omplaint *without* prejudice” and allow Plaintiff to file an Amended Complaint that would “[r]emove and/or add personally liable

defendants” and “[a]mend and [s]upplement the [p]leadings to [e]nsure that they state a claim of personal liability for each [D]efendant.” (Letter from Pl. to Court (May 16, 2019) (“May 16 Pl. Letter”) (emphasis in original) (Dkt. No. 21).) On June 14, 2019, Defendants informed the Court that they did not oppose Plaintiff’s request to amend the Complaint. (Letter from Defs. to Court (June 14, 2019) (“June 14 Defs. Letter”) (Dkt. No. 22).)

Plaintiff is therefore granted leave to file an Amended Complaint within 30 days of the date of this Order. The Amended Complaint should contain appropriate changes to remedy the alleged deficiencies discussed in Defendants’ Motion. Plaintiff is advised that the Amended Complaint will replace, not supplement, the original Complaint, and therefore must contain *all* of the claims, factual allegations, and exhibits that Plaintiff wishes the Court to consider. If Plaintiff fails to abide by the 30-day deadline, his claims may be dismissed with prejudice. Because of the filing of the Amended Complaint, the Court denies the pending Motion without prejudice. Defendants may submit a request to file a Motion To Dismiss Plaintiff’s Amended Complaint once the Amended Complaint is filed, pursuant to the Court’s individual rules. The Clerk of the Court is respectfully directed to terminate the pending Motion, (Dkt. No. 18), and mail a copy of this Order to Plaintiff.

SO ORDERED.

DATED: February 26, 2020
White Plains, New York


KENNETH M. KARAS
UNITED STATES DISTRICT JUDGE